

1 transport or for something like that. But they have made  
2 the decision that on average it is, we're better off, we can  
3 get a better approximation to market rates, by letting the  
4 market, imperfect as it is, determine those rates, rather  
5 than trying to do something as the FCC has done historically  
6 based on cost and arbitrary markups above cost.

7 COMMISSIONER BAKER: Okay. In evaluating a  
8 wholesale market to determine if it is a competitive market,  
9 should we look to see if there are multiple suppliers of a  
10 commodity or product to make that determination if it is  
11 competitive?

12 THE WITNESS: Well, yes, that's certainly  
13 important, be careful with multiple suppliers, because at  
14 least in one of these wholesale market, the multiple  
15 suppliers are the companies themselves, and I have in mind  
16 switching. That is, you may not see a market for wholesale  
17 switching, but rather if you read the TRO and the TRRO, the  
18 evidence appears to be that firms can provide their own  
19 switching. It may not make sense for a firm to provide  
20 wholesale switching to others but a CLEC is not impaired if  
21 it has to buy its own switch.

22 COMMISSIONER BAKER: Thank you.

23 CHAIRMAN WISE: For the Commission.

24 MR. WALSH: Thank you.

25 CROSS EXAMINATION

1 BY MR. WALSH:

2 Q Good afternoon, Mr. Taylor. My name is Dan Walsh  
3 and I'm representing the Commission staff.

4 A Good afternoon, Mr. Walsh.

5 Q I have just a few questions for you this  
6 afternoon. First, could you refer please to page 19 of your  
7 testimony, line 18?

8 A Yes.

9 Q Okay, you mention the term "equilibrium prices."  
10 Could you explain what you mean by that term?

11 A Yes, when a regulatory -- regulator or regulatory  
12 process tries to estimate what market-based rates would be.

13 For example, by measuring cost and measuring markups above  
14 that cost, what they're aiming for is an equilibrium price.

15 That is, in a perfectly competitive market the long-run  
16 equilibrium price is one where the price is equal to  
17 incremental cost and to average cost, but that's just  
18 equilibrium. That's the -- the price towards which the  
19 process is pushing prices, sometimes it'll be high, firms  
20 will make a profit; firms will enter, the price will go  
21 down, sometimes it'll be low, the firms will exit, blah,  
22 blah. But the result, the thing that you're trying to  
23 measure if you use an historical forward looking cost-based  
24 rate, is an equilibrium price.

25 Q And you state further down in that paragraph and I

1 believe on to page 20, that if the price for a delisted  
2 network element is set below the equilibrium level -- I'm  
3 having trouble with that word -- three things will happen.  
4 First, you say it would encourage excessive consumption or  
5 inefficient use of the elements. Second, it would depress  
6 the incentive of the supplier to offer more of the element.  
7 And third, it would distort the make or buy decision of the  
8 purchasing competitors in the direction of buying. Have I  
9 have read your testimony accurately?

10 A Yes.

11 Q Okay, if this Commission were to set a just and  
12 reasonable rate for a delisted network element that exceeded  
13 BellSouth's cost in providing that network element so that  
14 BellSouth earned a healthy profit on the element, wouldn't  
15 BellSouth still have the incentive to offer the element?

16 A Well, yes, BellSouth would have the incentive to  
17 offer the element. I guess the problem is what you define  
18 as a healthy profit is a fatally ambiguous number. I mean,  
19 we shouldn't be talking about profit, we should be talking  
20 about margin, about the difference between price and  
21 incremental cost. And even if that number is very, very,  
22 large that still can be perfectly consistent with a  
23 competitive market.

24 For example, long distance, look today at -- at  
25 what long distances prices are, it's a very competitive

1 market. The average revenue per minute that long distance  
2 carriers get is well above the incremental network cost of  
3 producing the minutes. And that's because there are fixed  
4 costs in the business.

5 Q I'm speaking specifically though to the harms that  
6 you identify in your testimony and whether they would be  
7 still harms if this Commission set a just and reasonable  
8 rate in which BellSouth earned a healthy profit, would they  
9 than have -- I think you stated BellSouth would still have  
10 the incentive to offer the element if it's making a healthy  
11 profit on it.

12 A Sure. If by some miracle, the Commission actually  
13 set a rate which was what the competitive market rate might  
14 be, then at least in the long run, there would be no damage  
15 having done that.

16 Q Why would that be a miracle? I mean, BellSouth is  
17 here today, they're going to be providing testimony to this  
18 Commission, they're going to be briefing the issue -- why  
19 would it be a miracle for the Commission to set a just and  
20 reasonable rate?

21 A Well, no wait, be careful -- to set a just and  
22 reasonable rate is fine, because that's a wide range, but to  
23 set precisely what the competitive market rate would be, I  
24 don't think anyone has much of an idea of what that number  
25 is. That's something that you find out over time. Ask a

1 grocer what the competitive market price of Cheerios is, and  
2 he won't go do a cost study, he'll go tell you, well, I  
3 charge \$2.75 a box and here's how many I sell. I charge  
4 \$2.40 a box and here's how many I sell, and you know what  
5 the competitive market price is \$2.39. He knows it within a  
6 penny, but he didn't find it out by doing a cost study or  
7 the sort of tools that this Commission or that BellSouth has  
8 at its disposal to try to calculate that.

9 Q I'm sorry, if I misstated your testimony then. So  
10 if I understand it, you're not saying that the Commission  
11 couldn't set a just and reasonable rate that would still  
12 provide BellSouth with the incentive to offer their element,  
13 you're just saying that it might not be precisely what would  
14 happen if the Commission did not set a just and reasonable  
15 rate?

16 A Correct. I think my final recommendation is, if  
17 the Commission insists on setting a just and reasonable  
18 rate, it seems to me that the FCC standard in the TRO is a  
19 fairly good standard for a just and reasonable rate. So  
20 take a market rate based on negotiated settlement or take a  
21 regulated rate that you declared to be just and reasonable  
22 for use.

23 Q Let's look at some of the other problems that you  
24 identify in your testimony. If -- if the just and  
25 reasonable rates set by the Commission in this proceeding

1 required BellSouth's competitors to fork over such an amount  
2 that would enable BellSouth to earn a healthy profit, that  
3 wouldn't stay encouraged excessive consumption and  
4 inefficient use of the element, would it?

5 A If by healthy profit you mean, set it really high  
6 above the market rate, it would be the opposite. It would  
7 still be an inefficient use of the element, but it would be  
8 too less, too little, they would be consuming too little of  
9 it.

10 Q So there's a potential danger on either side, but  
11 if the Commission set a just and reasonable rate that was  
12 not exorbitant but still allowed for a profit, would this --  
13 would the harm, the potential for harm related to excessive  
14 consumption and inefficient use be any greater than if there  
15 were no such just and reasonable rates set?

16 A No, I think, if Commission were to set a  
17 competitive market rate, then the three distortion rates  
18 that I speak of here would not occur.

19 Q Thank you. On page 22 of your testimony beginning  
20 on line 9.

21 A Yes.

22 Q You discuss the potential for failure of the  
23 bargaining process, when a competitor insists I'm not paying  
24 any price above the ILEC cost or the TELRIC-based rate for  
25 the UNE regime, is that correct?

1 A Yes.

2 Q So, would it be reasonable to assume that a ILEC  
3 would consider its cost in providing the element in  
4 determining whether a competitor's offer was worth  
5 accepting?

6 A Certainly.

7 Q And --

8 A I'm sorry, that is one element of what it  
9 considers, demand is the other.

10 Q If the Commission were to set about setting a just  
11 and reasonable rate for a network element, wouldn't it then  
12 be reasonable for the Commission to consider BellSouth's  
13 cost in providing that element under the same way, not  
14 limiting its consideration to the cost, but considering the  
15 cost in reaching that determination?

16 A Sure, if the Commission is trying on its own with  
17 its own skills to estimate what the intersection of what the  
18 supply and demand curve in competitive markets would produce  
19 it needs to know what the demand curve looks like.

20 Q If I can get you now to turn -- sorry to be  
21 jumping around like this -- but to page 1 of your testimony.

22 A Yes.

23 Q You quote from an opinion of Justice Breyer  
24 concurring in part and dissenting in part from the majority  
25 in AT&T v. Iowa Utility Board, the 1999 Supreme Court case,

1 correct?

2 A Yes.

3 Q And the excerpt that you quote from discusses the  
4 impact of unbundling requirements on competition, correct?

5 A Yes.

6 Q And in this portion of the Justice's opinion, he  
7 is discussing the vacatur of the FCC's Rule 319, correct?

8 A I believe that's correct.

9 Q And is it correct that the FCC's Rule 319 is on  
10 unbundling under Section 251(c)(3) of the federal telecom  
11 act?

12 A I'll take that subject to check, yes.

13 Q Okay, and that's not what we're doing in this  
14 proceeding, right, we're looking at a standard under Section  
15 271?

16 A Yes. Justice Breyer's technical opinion as to  
17 what he was talking about is not directly relevant here, it  
18 is the economics of it that's relevant. Mainly that more  
19 unbundling does not mean more competition and indeed means  
20 less, that was the point of the exercise.

21 Q Okay, I just wanted to clarify what he was  
22 discussing at the time when he made that analysis.

23 A Yes.

24 Q Finally -- not quite finally, but on page 4 of  
25 your testimony, you state that the Commission already



1 approved 60 BellSouth's commercial agreements under Section  
2 252 and therefore has already held that the rates contained  
3 in those agreements were just and reasonable, correct?

4 A Yes.

5 Q Are you familiar with Section 252 of the federal  
6 telecom act?

7 A I've certainly read it, yes.

8 Q Okay, now Section 252(e)(2) states that state  
9 commissions may only reject an agreement adopted by  
10 negotiation under subsection (a), if it finds that, one, the  
11 agreement or portion thereof discriminates against a  
12 telecommunications carrier not a party to the agreement or  
13 to the implementation of such agreement or portion is not  
14 consistent with the public interest, convenience and  
15 necessity. Is that a fair reading of the statute, to your  
16 recollection? I can provide it to you if you'd like.

17 A It exceeds my recollection --

18 Q Okay.

19 A -- but I'll take it subject to check.

20 Q Okay, thanks. It's possible then, isn't it, that  
21 this Commission considered the rates in the commercial  
22 agreement to be too high, but not discriminatory or  
23 inconsistent with the public interest, convenience and  
24 necessity, correct?

25 A Well, of course anything is possible, except I

1 don't distinguish myself much between public interest,  
2 convenience, and necessity and just and reasonable. I'm not  
3 sure that I can write an essay explaining why those are  
4 different.

5 COMMISSIONER BAKER: Have you looked at any of the  
6 rates in those 60 contracts to see what they were to make  
7 some kind of a quick analysis of the variation between them?

8 THE WITNESS: No, I haven't.

9 BY MR. WALSH:

10 Q It's an interesting argument you raise as to  
11 whether the Commission could deny, could reject an  
12 interconnection agreement based on it thinking that the  
13 particular rates that the two private parties had entered  
14 into were too high, but you would agree that that turns on  
15 the Commission's interpretation of public interest, correct?

16 A Yes.

17 Q And there's no orders of the Commission stating  
18 that it's determined that the rates in those agreements were  
19 just and reasonable, correct?

20 A None that I'm familiar with.

21 Q Okay, and public interest could be viewed as the  
22 interest of the public at large and not the individual  
23 competitor that has entered into an agreement with  
24 BellSouth, correct?

25 A It's conceivable, but not logical. I mean, it

1 seems to me that if the rates were unjust and unreasonable,  
2 then customers must suffer from that, and by customers I  
3 mean customers beyond the CLEC that have to pay it. And  
4 those are the public whose interest is what we're looking  
5 for. So, as I said, I don't think I can draw a strict line  
6 between rates which are unjust and unreasonable, but which  
7 are nonetheless in the public interest, I don't think I  
8 could find such a rate.

9 COMMISSIONER BAKER: Dr. Taylor, don't the  
10 commercial agreements contain, I don't know, if not  
11 hundreds, sometimes thousands of different provisions other  
12 than just pricing provisions?

13 THE WITNESS: Absolutely.

14 COMMISSIONER : And -- and when you're negotiating  
15 a contract you're looking at sort of the totality of the  
16 contract, not just normally a single element?

17 THE WITNESS: Sure.

18 COMMISSIONER BAKER: So, you may have some give  
19 and take as far as -- you may think the price is  
20 unreasonable, but I need it now and there are other  
21 conditions contained within the commercial agreement which  
22 are advantageous to me, so I'm not going to fuss with the  
23 price or I'm making concessions and overall, I'll accept the  
24 commercial agreement because of the totality of all of the  
25 terms and conditions that I've negotiated.

1           THE WITNESS: Oh, I'm sure that's correct, and I  
2 think that's exactly the right -- the right analysis. And I  
3 think that's what you apply when you look at whether rates  
4 are just and reasonable, that is to pick out a single rate  
5 from the thousands of rates that a telephone company  
6 provides and ask is this rate, looked at by itself, just and  
7 reasonable? I don't think you can answer that question. My  
8 favorite example is switched access, I mean, that was 16  
9 cents a minute in 1984 and that was just and reasonable in  
10 the FCC's mind, not because a price thousands of times  
11 incremental cost made sense, but because it made sense in  
12 the totality of the rest of the rates that were involved in  
13 access at the time.

14           So, I'm very much inclined to agree with you that  
15 looking at rates individually and trying to apply a just and  
16 reasonable standard is a very dangerous thing to do.

17 BY MR. WALSH:

18           Q     Mr. Taylor, you're aware that when the Commission  
19 issued rates under 251/252 under the cost docket, that an  
20 individual CLEC was not required to take advantage of the  
21 Commission's rates? Are you aware of any times that the  
22 Commission rejected an interconnection agreement between  
23 BellSouth and one of its competitors because it did not  
24 adopt a particular rate that the Commission ordered in a  
25 cost docket?

1 A No.

2 Q Okay, does BellSouth have commercial agreements  
3 for anything other than DS0's?

4 A You mean unbundled loops?

5 Q Yes.

6 A I think so, but I don't know specifically.

7 Q Okay, thank you.

8 MR. WALSH: Mr. Chairman, that's all the questions  
9 that I have.

10 CHAIRMAN WISE: Thank you, very much. CUC?

11 MS. MELLINGER: No questions.

12 CHAIRMAN WISE: Thank you. AT&T?

13 MS. OCKLEBERRY: No questions.

14 CHAIRMAN WISE: Competitive Carriers?

15 MR. MAGNESS: Thank you, Mr. Chairman.

16 FURTHER CROSS EXAMINATION

17 BY MR. MAGNESS:

18 Q Dr. Taylor, do you have a copy of the triennial  
19 review order?

20 A No.

21 Q Okay, I can show you mine as we look at it. I  
22 only have one.

23 A I have pieces of it. Tell me the paragraph.

24 Q Okay, we don't need to look at it right now, I  
25 just thought it might save us some time. Do you have a copy

1 that you can show him. Okay, we'll talk about it when we  
2 get there.

3 Dr. Taylor, what is the actual just and reasonable  
4 rate you're proposing in this proceeding for high capacity  
5 loops that have been delisted under Section 251?

6 A I am proposing that the Commission use as a -- a  
7 benchmark the special access rate, the intrastate special  
8 access rates, I guess, for intrastate services; and any  
9 rates that are contained in commercial agreements. And by  
10 "use," I mean treat those rates as if they were just and  
11 reasonable.

12 Q Okay. Well, then, what -- what is the intrastate  
13 special access rate that you propose is a just and  
14 reasonable rate for high capacity loops delisted under  
15 Section 251 in Georgia?

16 A Do you mean the -- the dollar value of it?

17 Q Yes.

18 A I'm -- I don't know. I'm not familiar with the  
19 tariff.

20 Q Okay. You were talking to Mr. Walsh earlier about  
21 fatally ambiguous numbers. I mean, you don't -- you don't  
22 even have a range of what you can tell the Commission you're  
23 proposing?

24 A Well, I'm not proposing. BellSouth is proposing.  
25 I'm telling you what a just and reasonable process is, and

1 the just and reasonable process that I think applies here is  
2 the one that says go look at the commercial agreements, go  
3 look at tariffed special access rates.

4 Q But you don't know what those are?

5 A That's correct.

6 Q Okay. But it's your recommendation that the  
7 Commission adopt them, even though you don't know what they  
8 are?

9 A Yes, that's correct.

10 Q Okay. And the answer may be similar. Just let me  
11 know if it is. What is the rate that you're proposing for  
12 dedicated interoffice transport in this proceeding?

13 A Same answer.

14 Q And what is the rate that you're proposing for  
15 unbundled local switching?

16 A Again, same answer.

17 Q Okay. You referenced going to look at the  
18 tariffs. I'm not sure if BellSouth let you know, but in the  
19 order initiating this docket -- I'll just quote from page 4.

20 The Commission said, "The Commission will proceed with an  
21 expedited hearing schedule as detailed below for the purpose  
22 of setting just and reasonable rates for delisted UNEs  
23 pursuant to Section 271."

24 So if you're about the business of setting a rate,  
25 what is the rate that you recommend and BellSouth proposes

1 for unbundled local switching?

2 A And the answer is look at the rates that are  
3 contained in commercial agreements. Look at the rates that  
4 are contained in tariffed access filings. And that's --  
5 that's all I have --have to contribute. My answer as an  
6 economist is to look at what the FCC, which is the standard  
7 -- at least I think the relevant standard for what just and  
8 reasonable is, and look at what they've said constitutes a  
9 process for coming up with just and reasonable rates. I  
10 haven't done that, and I don't know the number.

11 Q Well, given that we're engaged in a process of  
12 setting just and reasonable rates in this proceeding, is it  
13 correct that you are proposing a process in this process,  
14 and not proposing a rate?

15 A I'm proposing a standard, Mr. Magness. I'm not --

16 Q Okay.

17 A BellSouth will propose the rate. I'm not  
18 proposing a rate.

19 Q Recommending a rate to the Commission.

20 A Well, "propose," "recommend," I'm not sure what  
21 the difference is.

22 Q Do you know if BellSouth has filed any testimony  
23 besides yours that proposes a rate for these elements?

24 A In this proceeding I don't believe I know of one  
25 except for unbundled -- for high frequency DSL.



1 Q That's in Mr. Williams' testimony?

2 A Correct.

3 Q Okay. How -- how would I go about finding out  
4 what the proposed local switching rate is? I understand you  
5 have not reviewed any of the commercial agreements that  
6 BellSouth has -- has entered into for DS0 switching or --

7 Well, for DS0 switching. Right?

8 A Correct.

9 Q Okay. And yet, whatever it is that's in those  
10 commercial agreements, it's your recommendation that the  
11 Commission adopt as just and reasonable?

12 A That's correct. Because those rates were  
13 determined in -- through competitive market forces.

14 Q And how would -- how would I go about finding out  
15 what those rates are?

16 A Well, the way I think that the FCC intends that  
17 you find them out is that you enter into negotiations with  
18 BellSouth for a commercial agreement between whoever you  
19 represent and BellSouth.

20 Q Okay. So if the Commission was -- was seeking to  
21 do what it said it was going to do in this proceeding, and  
22 that is set a just and reasonable rate, it -- it can't do  
23 that, right, under your view of how this works?

24 A No. It has -- assuming that it wanted to set a  
25 number, it has access to commercial agreements. So

1 BellSouth will propose a number; other parties may propose  
2 -- I believe your parties have proposed a number.

3 Q Uh-huh.

4 A And the Commission can candle those numbers  
5 against the standard from the TRO, which says, "What do  
6 those numbers look like compared with competitive market  
7 rates from commercial negotiations on the one hand, or  
8 tariffed rates that some regulator has determined to be just  
9 and reasonable?"

10 COMMISSIONER BAKER: And should it be the average  
11 of the commercial agreement rates looked at? Or what about  
12 if from one of those 60 agreements there was a CLEC that,  
13 for whatever reason, was willing to pay, you know, 500  
14 percent, 1000 percent over a -- a reasonable commercial  
15 rate, for whatever reason, you know. There are various  
16 reasons. Is that the standard that we're going to use to  
17 say that, hey, this -- this CLEC is willing to pay 1000  
18 percent over what is a average cost; and because of that,  
19 that is the -- I guess the range that we look to as far as  
20 what is a commercially reasonable -- just and reasonable  
21 rate? That if -- that if somebody -- if there is one  
22 customer out there who will pay that rate, whatever it is,  
23 then obviously it was negotiated through market  
24 -- competitive market, and they agreed to it, no matter how  
25 crazy you and I might think it is.

1           THE WITNESS: Well, no. I mean, looking back at  
2 what the FCC says is going to happen here, I don't think it  
3 contemplates your setting the rate. But suppose you were to  
4 set a rate, and it was this rate that we all think is crazy,  
5 but which some CLEC agreed to under some circumstances.  
6 It's a weird CLEC. It's got something strange that meant  
7 that this was a good deal for it.

8           COMMISSIONER BAKER: Right.

9           THE WITNESS: Now, what you're suggesting is: Are  
10 we -- are you going to impose that same weird deal on every  
11 other CLEC? And the sensible answer is: Why, no, that  
12 doesn't make sense.

13           And what does the FCC say it will do about it? It  
14 says, as I read the TRO, is that it will look at the rate  
15 that gets charged as part of its 271 enforcement obligation  
16 and say gosh, that's a -- that's a crazy rate. That's not  
17 the rate that CLECs ought to be -- that BellSouth ought to  
18 be permitted to be charged.

19           That's my understanding of how the process would  
20 work. To say that a carrier might be -- might accept a rate  
21 which looks strange to us because its circumstances are  
22 strange is a perfectly true fact of competitive markets.  
23 And to say that, you know, somehow that result ought to be  
24 thrown out or ignored because it isn't like every other CLEC  
25 is wrong, I think. I mean, that's one of the problems in

1 trying to regulate in markets that are at least open to  
2 competition.

3 Carrier circumstances are different. And if  
4 you're going to try to apply one rate, for example, to every  
5 carrier, then you have got a problem.

6 COMMISSIONER BAKER: Right. But, I mean, going  
7 back to your earlier discussion about what's just and  
8 reasonable, and if there's a customer out there or a CLEC  
9 out there that is willing to pay in a competitive market a  
10 certain price, regardless of what the majority of CLECs or  
11 consumers think is reasonable, then under your definition  
12 that would be -- that would be a just and reasonable price  
13 under -- under the circumstances of that contract.

14 THE WITNESS: That would be -- sure. Think of  
15 what the circumstances are, though. I mean, it's like  
16 buying bundles, you know. We can all think of buying, say,  
17 new cars or something where the -- the dealer will throw in  
18 a radio. I guess they don't have radios anymore. Whatever  
19 sound system for -- you know, for free, as long as you buy  
20 ten other things that -- that are -- at an outrageous price.  
21 Well, all we know is that -- or what -- what's competitive  
22 is the bundle.

23 So the CLEC that pays a fortune for switching, for  
24 example, but gets a good deal somewhere else, on transport,  
25 for example, that would be a competitive market standard

1 that you wouldn't apply piecemeal. But certainly the rates,  
2 because we've assumed they've been done in a competitive  
3 market, are just and reasonable, but you can't just pick one  
4 rate out of the bundle and say wow, you know, that's a crazy  
5 rate to impose on everyone else. How could it be just and  
6 reasonable? Well, it's just and reasonable because of  
7 something else.

8 BY MR. MAGNESS:

9 Q What would it indicate about a commercial  
10 agreement if the CLEC just didn't have any lines that it was  
11 actually operating under the commercial agreement? It  
12 entered into the commercial agreement, let's say, but has  
13 everything on resale, left everything on resale, but it  
14 signed this agreement because BellSouth asked it to and --  
15 does that provide us any indication of the justness or  
16 reasonableness of a particular rate?

17 A Well, yes, I think I guess it -- I think it does.  
18 It provides you even more information than that. It tells  
19 you that whatever this rate is, that CLEC has some other  
20 alternative, BellSouth resale, possibly, or some competitive  
21 alternative or self-supply that's cheaper than the market  
22 price. And --

23 Q How does it tell you that?

24 A Because the CLEC has the choice, I presume, of  
25 supplying its lines with switching under the agreement or

1 with resale; right? I mean, it's negotiated an agreement,  
2 it's got its price, and it's got all sorts of other  
3 alternatives. It can always do resale; it could always buy  
4 its own switch; it can always do some other things. And you  
5 would expect that that CLEC every day is out there trying to  
6 figure out what, for each one of its customers, the  
7 cheapest, best way of provisioning serve -- what the  
8 cheapest and best way of provisioning service is. Sometimes  
9 that may involve using the lines, the unbundled elements  
10 whose prices it's negotiated; sometimes it can do better  
11 elsewhere. It's not surprising in a competitive market.

12 Q And what does it indicate about the justness and  
13 reasonableness of a rate in a situation such as AT&T's  
14 commercial agreement where AT&T said before it signed the  
15 agreement it was leaving the residential market that it'd  
16 been serving through UNE-P, ultimately merged with another  
17 BOC. Does the -- does that sort of agreement that's  
18 essentially part of an exit strategy tell us anything about  
19 the justness or reasonableness of a rate?

20 A Well, I think it does in the sense that between  
21 now and whenever, if ever, AT&T actually exists the -- the  
22 mass market in Georgia, it is better off if it can negotiate  
23 a lower rate to pay to serve the customers that it already  
24 has. I don't know, I'm not privy to AT&T or SBC's strategy.  
25 I don't know that they're going to be turning customers

1 off. And I mean by that customers in Georgia, not customers  
2 in the SBC footprint.

3 And for every day that they're not, every nickel  
4 that they can save by negotiating a lower switching rate is  
5 a nickel for the corporation. So --

6 Q So is there anything about the fact that a  
7 commercial agreement exists that doesn't inform whether it's  
8 just and reasonable? I mean, it sounds to me like every  
9 single thing about any rate might give us a sense that maybe  
10 that's just and reasonable, theoretically. Any agreement of  
11 any sort with any rate provides evidence of justness and  
12 reasonableness; right?

13 A Any agreement brought about by two independent  
14 parties who have no particular connection, at arm's length,  
15 negotiated; both have alternatives; and, yes, those -- all  
16 of the information that's contained in rates thus created is  
17 useful information about what the market rate is.

18 Q And if this Commission or the FCC was setting a  
19 just and reasonable rate, how -- again, how did they do  
20 that? How do they establish that range --

21 A Well --

22 Q -- if they were -- if they choose to establish a  
23 range or establish a range. I understand they could say  
24 let's look at the process. But how do they go about that?

25 A Well, look at how the FCC has done it. I mean,

1 this is nothing new. The FCC has looked at ranges of just  
2 and reasonable rates in lots of different contexts over the  
3 years. And the examples I can think of are delisted  
4 unbundled elements like access to operator services, for  
5 example. The others are the new services test -- that's the  
6 famous one -- where there is a wide -- historically very  
7 wide range of rates which are considered to be just and  
8 reasonable.

9 And the FCC looks at -- at that range, looks at a  
10 range that's presented with it, determines whether  
11 circumstances are unique about either the end points of the  
12 range its looking at or the carrier whose rate is -- they're  
13 examining, and says well, yeah, to us this looks like it's  
14 just and reasonable candled up against the range of -- of  
15 rates that we have determined in the past to be just and  
16 reasonable. Doesn't mean they have to have a single number.

17 Q When you were formulating your recommendation in  
18 your testimony here, did you examine any competitive  
19 offerings available in Georgia for DS0 level local  
20 switching?

21 A No. I've looked at lots of those, but not in  
22 Georgia.

23 Q Did you conduct any analysis of those that  
24 informed your testimony or recommendation?

25 A I'm sorry, I -- I may have answered too quickly.



1 You said for DS0 wholesale switching?

2 Q Yes.

3 A No, because I believe that the competitive  
4 switching is not brought about by wholesale switching, but  
5 by carriers' self-supplied switching. But the answer still  
6 is "no."

7 Q So it's your understanding that there are no  
8 -- there are not other wholesale offerings of switching in  
9 Georgia available to CLECs, but rather, if a CLEC is not  
10 using BellSouth switching, it's self-supplying?

11 A Yes. That's -- that's not based on a Georgia-  
12 specific discovery, but that's my impression from -- from  
13 the rest of the country.

14 Q Okay. And did you examine any competitive  
15 offerings available specifically in Georgia for interoffice  
16 dedicated transport?

17 A No.

18 Q Did you examine any competitive offerings  
19 available in Georgia for high capacity loops?

20 A No.

21 Q Okay. Now, when you were talking to Mr. Walsh  
22 earlier, you were talking a little bit about the grocer and  
23 how the grocer figures out what the market is. The guy from  
24 Publix goes to Safeway, looks at what his competitors are  
25 offering. I guess, as I take it, BellSouth is contending